

STATE OF MAINE

SUPREME JUDICIAL COURT
DOCKET NO. BAR-03-08

BOARD OF OVERSEERS OF THE BAR)
)
 Plaintiff)
 v.)
)
LAURIE ANNE MILLER, ESQ.)
 of Bangor, Maine)
 Me. Bar #3231)
 Defendant)

ORDER

This matter came before the Court on May 24, 2004 pursuant to a disciplinary information filed by the Board of Overseers of the Bar on December 1, 2003. Bar Counsel J. Scott Davis, Esq. represented the Board, and Defendant Laurie Anne Miller, Esq. of Bangor, an attorney admitted to practice law in Maine and subject to the Maine Bar Rules appeared *pro se*.

FINDINGS

Based on the testimony of Katherine A. Violette and Attorney Miller, coupled with facts and ethical violations alleged in the disciplinary information which were admitted by Miller, the Court finds as follows:

On or about January 7, 1997, Katherine A. Violette was injured on a Bangor Housing Property sidewalk and suffered multiple injuries. Shortly thereafter Violette hired legal counsel at Downeast Law Associates, P.A. from Orrington to pursue a civil action against Bangor Housing Authority. Violette's matter was initially handled by Attorney

Julio DeSanctis who then referred the matter to Miller at Downeast Law Associates.

On or about January 7, 1999, two (2) years after Violette's injuries had occurred, a civil complaint was filed in the Penobscot County Superior Court by Miller on Violette's behalf against Bangor Housing Authority. Miller misled Violette by telling her that her case had been filed in court earlier than it had been, and later further misled Violette by telling her that the case was still pending and taking a long time in Superior Court because civil cases such as Violette's action had to wait for the preferential scheduling treatment normally given to criminal cases on the court's docket. In fact, Miller failed to arrange for service of the summons and complaint, and thereafter failed to take any action in the case.

Miller subsequently failed to respond to the Superior Court's Order of August 1, 2001 to show cause why Violette's case should not be dismissed pursuant to M. R. Civ. P. 41(b)(1). On October 25, 2001 Penobscot County Superior Court Justice Jeffrey Hjelm ordered Violette's case –*Violette vs. The Bangor Housing Authority* – dismissed with prejudice. The Penobscot County Superior Court Clerk's office provided Miller with a copy of Justice Hjelm's dismissal order of October 25, 2001. Miller never informed Violette of the dismissal when it occurred or anytime thereafter. She also failed to inform Violette that her law office had moved to a new location in Bangor.

Furthermore, as late as February 2003 when Violette telephoned Miller to inquire about the status of the case, Miller misrepresented facts to Violette by stating she was still waiting for a court date in Violette's lawsuit. When Violette then responded by telling Miller that by her own recent inquiry of the Penobscot County Superior Court Clerk, she was told that her case had in fact been dismissed by the court on October 25, 2001, Miller promised to check and confirm that the dismissal had occurred. However, Miller failed to do as promised, and never had any further contact with Violette.

On May 20, 2003, Violette complained to the Board. When Miller responded to Bar Counsel about Violette's grievance complaint, she provided no details as to the actual reason for her failure to inform Violette that her lawsuit had been dismissed for lack of prosecution, but did admit that Violette's "court complaint was dismissed due to an error that (Miller) made." Miller also acknowledged that she had received many calls and inquiries from Violette, but never reviewed the file during those conversations, and instead only explained to Violette what to expect in the normal course of civil litigation. At the hearing before this Court, Miller testified that the "mistake" she committed was her failure to have the defendant (Bangor Housing Authority) served. She also admitted that she never informed Violette of her failure to make service.

Miller claimed in her response to Violette's grievance that she never saw or knew of any dismissal of the civil action until it had been

“brought to (her) attention by Ms. Violette this year.” At the hearing, however, Miller admitted that she did know or certainly should have known from the long delay of any action, that Violette’s litigation had been dismissed, and that she erred by not taking any action to prevent the dismissal, and by failing to correctly and truthfully inform Violette of the dismissal.

MISCONDUCT

By her failure to pursue Violette’s personal injury matter and by her further failure to respond to the court’s request and/or demand for her to show cause why the matter should not be dismissed under M.R. Civ. P. 41(b), Miller engaged in violations of M. Bar R. 3.6(a)(1)(2)(3).

In addition, by her failure to be diligent and thorough in her maintenance or review of Violette’s case file when Violette would call and inquire, or at any other necessary times, Miller again violated M. Bar R. 3.6(a)(1)(2)(3). The Court is particularly concerned that Miller further engaged in flagrant misrepresentations to Violette well after a year from the date the matter had been dismissed with prejudice by stating that the case was still on the court’s docket. These misrepresentations are clear and serious violations of M. Bar R. 3.2(f)(3)(4). Standing alone, such egregious deceit of this client concerning Miller’s own failure to properly pursue the litigation, and her failure to take any steps to prevent the court’s dismissal of the litigation for lack of prosecution, is serious misconduct warranting significant disciplinary sanction.

PRIOR DISCIPLINARY HISTORY

Attorney Miller has the following similar prior disciplinary record history on file with the Board of Overseers of the Bar:

- March 31, 1998: Grievance Commission panel hearing at which Miller stipulated to facts and her misconduct, she was publicly reprimanded for violations of Maine Bar Rules 3.1(a) (conduct unworthy of an attorney); 3.6(a)(3) (neglect) and 3.6(e)(2)(iv) (failure to timely return property to client).

Based on the Panel's Report imposing that earlier reprimand, the Court finds that there is similarity between the misconduct involved in Miller's reprimand in 1998 and the misconduct in the present matter involving her neglect of and misrepresentations about the court's dismissal of Violette's lawsuit.

SANCTION

The seriousness of Miller's violations of the Bar Rules requires that she be suspended from the practice of law. Given the similarity between this current misconduct and that of the 1998 reprimand, Bar Counsel contends that at least some period of "actual served" suspension must be imposed. Miller asks that she receive only a "suspended suspension," with a court-ordered attorney/monitor arrangement being put in place to supervise her practice for a specific period of time. Bar Counsel does not

object to such a supervisory arrangement as long as some period of real suspension from the practice of law is also imposed upon Miller.

M. Bar R. 2(a) provides that the purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who, by their conduct, demonstrate an inability to properly discharge their professional duties to clients, the legal system, the profession or the courts.

Miller's serious misconduct violated duties to her client as well as to the legal system and the profession. At the outset she acted in a grossly negligent fashion by not paying proper and appropriate attention to Violette's case, but she then greatly aggravated her misconduct by intentionally and knowingly deceiving Violette as to the true status of her case, including never informing Violette that the case had been dismissed by the court because of her neglect of it. Although Miller was relatively candid and contrite at the disciplinary hearing before this Court, she was not completely candid as to the nature, extent or seriousness of the misconduct she committed in Violette's matter in her response to Bar Counsel's initial inquiry concerning the grievance.

It is also significant that Violette has been injured and harmed by Miller's misconduct, both emotionally and financially. The statute of limitations for any action she might have had against the Bangor Housing Authority has now run so she has no legal ability to pursue any

claim for her injuries or to help pay any related outstanding medical expenses.

All of the above aggravating factors support the suspension of Miller from the practice of law. Therefore, in consideration of all of the facts and evidence before this Court, the Court imposes the following sanction:

Attorney Laurie Anne Miller is suspended from the practice of law in the State of Maine for a period of six (6) months, commencing October 1, 2004. All but two (2) months, specifically October 1 to November 30, 2004, of that suspension is hereby suspended, subject to the following conditions being met:

1. Miller shall submit her practice of law to the monitoring of Attorney Jane Skelton (hereinafter Attorney Skelton) of Bangor, Maine.

2. Attorney Skelton shall be a volunteer, shall receive no compensation, and shall not be expected to incur any substantial disbursements.

3. Miller will meet with Attorney Skelton at Attorney Skelton's calling and convenience on a monthly basis, unless Attorney Skelton determines that more frequent meetings are appropriate.

4. Attorney Skelton shall have the right to withdraw and terminate her services at any time for any reason that she deems necessary. If she does so withdraw, Attorney Skelton shall notify the Court, Bar Counsel

and Miller of that withdrawal, whereupon this matter shall then be scheduled for further hearing as deemed appropriate by the Court.

5. If any aspect of the monitoring procedures creates a situation which is, or might be interpreted to be a conflict of interest under the Maine Bar Rules, Attorney Skelton may then adopt any one of the following courses with the proposed result:

- a. Attorney Skelton shall cease to act as monitor and a potential conflict is avoided.
- b. Attorney Skelton continues as monitor, but totally excludes Miller's client's matter(s) from the monitoring process, so that no conflict is deemed to exist.
- c. Attorney Skelton continues as monitor, but withdraws from the conflicted matter.
- d. Attorney Skelton continues as monitor, and obligates Miller not to participate in the matter and to promptly obtain replacement counsel for her client(s).

6. If in Attorney Skelton's judgment it is appropriate, she shall have the right to contact clerks of court, judges, or opposing counsel to determine the accuracy of Miller's reports to her.

7. Attorney Skelton shall have no contact with any of Miller's clients, Attorney Skelton's only contacts in the performance of these monitoring duties being with Miller or other persons contemplated by this order.

8. Attorney Skelton's participation in the disposition of Miller's disciplinary case and monitoring of Miller's practice shall be deemed not to create an attorney/client relationship between Miller and Attorney Skelton or between Attorney Skelton and Miller's clients. Specifically, Attorney Skelton shall be deemed not to represent Miller or any of Miller's clients or to be represented by them in any capacity, and Attorney Skelton shall not have any responsibility of any nature to them. Moreover, the attorney/client privilege shall not apply to Attorney Skelton's monitoring of Miller's practice, and Attorney Skelton shall be immune from any civil liability (including without limitation, any liability for defamation) to Miller or any of Miller's clients.

9. Attorney Skelton will have the authority to review and examine any of Miller's files, if necessary, except those in which Attorney Skelton might have adverse interests under paragraph 5.

10. Miller shall prepare and present to Attorney Skelton reasonably in advance of each meeting a list of all her current clients, showing each pending client's matter with a brief summary and calendar of the status thereof.

11. On or before January 1, 2005, Attorney Skelton will have Miller establish a method of objectively identifying delinquent client matters and have her institute internal checks and controls to make her practice appropriately responsible to the needs of her clients. Within that same time period and to Attorney Skelton's satisfaction, Miller shall also

establish adequate time sheet, billing, and accounting systems to monitor both her and her clients' respective financial obligations to one another and to properly account to her clients.

12. Commencing on February 1, 2005, Attorney Skelton shall file a confidential report with the Court every three (3) months (or sooner if Attorney Skelton deems it necessary) with copies to Miller and Bar Counsel concerning at least the following subjects or requirements:

- a. Measures Miller has taken to avoid delinquencies.
- b. A description of any client matter identified as delinquent.
- c. Any professional assistance Attorney Skelton has provided to Miller.
- d. As part of Miller's compliance with the annual completion of the required 11 continuing legal education (CLE) credit hours for both calendar year 2003 (for which she is currently still delinquent in her CLE compliance) and calendar year 2004 under Maine Bar Rule 12(a), during the period of the "suspended suspension" of her right to practice law she will attend at least eight (8) credit hours of live, i.e., not self-study, CLE presentations dealing with office practice management issues, including attending at least that portion of the Maine State Bar Association's "Bridging the Gap" presentation in November 2004 that relates to such matters.

13. Attorney Skelton shall have the duty to report to Bar Counsel and the Court any apparent or actual professional misconduct by Miller of which Attorney Skelton becomes aware or any lack of cooperation by Miller in the performance of this Order.

14. Attorney Skelton's monitoring of Miller's practice will be for a period of one year commencing on December 1, 2004 – through November 30, 2005 unless terminated earlier as herein provided or by other Order of this Court.

15. Bar Counsel may request a hearing before this Court if he believes Miller has failed to comply with any of the conditions of this order for the Court to determine if any portion of the remaining "suspended suspension" from practice should be imposed upon Miller.

16. For that same purpose, Bar Counsel may file an information directly with the Court without any Grievance Commission review or hearing concerning any new complaints of professional misconduct allegedly committed by Miller and received by the Board after the date of this Order.

Date: August 23, 2004

Jon D. Levy, Associate Justice
Maine Supreme Judicial Court